



Doc ID: 022389420018 Type: OFF  
Kind: ENVIRONMENTAL PROTECTION AGENCY  
Recorded: 07/24/2020 at 03:03:19 PM  
Fee Amt: \$162.00 Page 1 of 18  
Lorain County, Ohio  
Judith M Nedwick County Recorder

To be recorded with Deed  
Records - ORC § 317.08

File **2020-0770851**

### ENVIRONMENTAL COVENANT

This Environmental Covenant is entered into by RACER Properties LLC ("Owner"), Revitalizing Auto Communities Environmental Response Trust ("RACER Trust") as the Holder, and the Ohio Environmental Protection Agency ("Ohio EPA") pursuant to Ohio Revised Code ("ORC") §§ 5301.80 to 5301.92 for the purpose of subjecting the real property located at 1400 Lowell Street, Elyria, Lorain County, Ohio ("Property" as shown and whose legal description is in Exhibit 1) to the activity and use limitations set forth herein.

WHEREAS, a Resource Conservation and Recovery Act Facility Investigation ("RFI") report summarizing prior and new investigations between 2000 and 2016 and issued in June 2016 evaluated the areas of interest identified in the Property's Site Summary Report (2007) for the presence of releases of hazardous waste or hazardous constituents that could pose an unacceptable risk to human health or the environment.

WHEREAS, the RFI groundwater investigation found that groundwater concentrations exceed U.S. Environmental Protection Agency Maximum Contaminant Levels at one or more locations, potential exposure through future use of groundwater as a potable source may result in an unacceptable risk.

WHEREAS, there are no habitable structures currently on the Property; because of the presence of volatile organic compounds in shallow groundwater at the upgradient boundary of the Property, however, the potential for unacceptable vapor intrusion exposure is assumed unless otherwise demonstrated prior to future construction.

WHEREAS, Human Health Risk Assessment analyses performed so far conclude that for each area of concern ("AOC") identified in the RFI, cancer risks do not exceed the Ohio EPA cancer risk goal of 1E-05 and non-cancer risks do not exceed the risk goal of an Hazard Index of 1 for commercial worker exposure.

WHEREAS, the 2016 RFI's calculated cancer risk for the construction/utility worker exposure to COPCs in soils did not exceed the target cancer risk of 1E-05 within any of

the AOCs; however, the non-cancer target of 1.0 was exceeded in all AOCs except the Open Burn Area.

WHEREAS, the activity and use limitations protect against unacceptable risk to human health and the environment from improper management of waste and other materials.

WHEREAS, the Administrative Record is maintained as the file titled RACER Trust in the Ohio EPA Northeast District Office, 2110 East Aurora Road Twinsburg, Ohio 44087.

Now therefore, the Owner, the Holder, and Ohio EPA agree to the following:

1. Environmental Covenant. This instrument is an environmental covenant developed and executed pursuant to ORC §§ 5301.80 to 5301.92.

2. Property. This Environmental Covenant concerns an approximately 141-acre tract of real property located at 1400 Lowell Street, in Elyria, Lorain County, Ohio, and more particularly described in Exhibit 1, attached hereto and incorporated by reference herein.

3. Owner. The Property is owned by RACER Properties LLC, with a place of business located at 1505 Woodward Avenue, Suite 200, Detroit, Michigan 48226, and a mailing address of P.O. Box 43859, Detroit, MI 48243.

4. Holder. Pursuant to ORC § 5301.81, the initial holder of this Environmental Covenant is RACER Trust.

5. Activity and Use Limitations. Owner hereby imposes and agrees to comply with the following activity and use limitations:

- a. Commercial or Industrial Land Use Only. The Property is hereby restricted to commercial or industrial land use only. Residential land use of the Property is prohibited.

Commercial land use is land use with potential exposure of adult workers during a business day and potential exposures of adults and children who are customers, patrons or visitors to commercial facilities during the

business day. Commercial land use has potential exposure of adults and children to dermal contact with soil, inhalation of vapors and particles from soil and ingestion of soil. Examples of commercial land uses include, but are not limited to: warehouses; building supply facilities; retail gasoline stations; automobile service stations; automobile dealerships; retail warehouses; repair and service establishments for appliances and other goods; professional offices; banks and credit unions; office buildings; retail businesses setting food or merchandise; golf courses; hospitals and clinics; religious institutions; hotels; motels; and parking facilities.

Industrial land use is land use with potential exposure of adult workers during a business day and potential exposures of adults who are visitors to industrial facilities during the business day. Industrial land use has potential exposure of adults to dermal contact with soil, inhalation of vapors and particles from soil and ingestion of soil. Examples of industrial land uses include, but are not limited to: lumberyards; power plants; manufacturing facilities such as metalworking shops, plating shops, blast furnaces, coke plants, oil refineries, brick factories, chemical plants, and plastics plants; assembly plants; non-public airport area; limited access highways; railroad switching yards; and marine port facilities.

- b. Prohibition against Groundwater Extraction. Groundwater located at or underlying the Property shall not be extracted or used for any purpose, potable or otherwise, except for investigation, monitoring, or remediation of the groundwater (including through the installation, operation, and maintenance of monitoring wells) or in conjunction with construction or excavation activities or maintenance of subsurface utilities.
- c. Prohibition Against Potable Water Well Construction. Construction of potable water wells is prohibited.
- d. Limitation on Building Occupancy. Remedy or Demonstration Obligations. Prior to human occupancy of any building constructed on the Property that is defined in Exhibit 1 of the Environmental Covenant as subject to this limitation, Owner shall either: (i) install, operate, and maintain a remedy as an engineering control with respect to such building that eliminates indoor air vapor intrusion exposure to hazardous substances in soil or groundwater in excess of applicable standards, under an operation and maintenance agreement; or (ii) make a demonstration to Ohio EPA that the Property

complies with applicable standards for the vapor intrusion to indoor air exposure pathway without further implementation of remedial activity.

- e. Limitation on Excavation Activities. For any and all excavation activities occurring at any depth below the surface within the areas identified in Exhibit 2, notice must be provided to the Owner and Ohio EPA and a health and safety plan must be submitted to Ohio EPA.
- f. Limitation on Transfer of Materials. No subsurface soils shall be transferred from the property without notice to the Owner and Ohio EPA.
- g. Interference with the Landfill Unit. No activity on the Property that may impact or interfere with the Landfill Unit, identified in Exhibit 3, and no operation, maintenance, inspection, or monitoring of the Landfill Unit shall occur without prior written approval from Ohio EPA. No engagement in or allowances of any uses or activities are permitted on the Property that:
  - a. Threaten the integrity of any cover, waste containment, storm water control, gas, leachate, public access control, or environmental monitoring system.
  - b. May interfere with the operation and maintenance, monitoring, or other measures necessary to assure the integrity of the Landfill Unit and continued protection of human health and the environment.
  - c. May result in release of solid waste constituents or otherwise exacerbate exposures.

6. Running with the Land. This Environmental Covenant shall be binding upon the Owner, during the time that the Owner owns the Property or any portion thereof, and upon all assigns and successors in interest, including any Transferee, and shall run with the land, pursuant to ORC § 5301.85, subject to amendment or termination as set forth herein. The term "Transferee" as used in this Environmental Covenant shall mean any future owner of any interest in the Property or any portion thereof, including, but not limited to, owners of an interest in fee simple, mortgagees, easement holders, and/or lessees.

7. Compliance Enforcement. Compliance with this Environmental Covenant may be enforced pursuant to ORC § 5301.91 and other applicable law. Failure to timely enforce compliance with this Environmental Covenant or the activity and use limitations contained herein by any party shall not bar subsequent enforcement by such party and shall not be deemed a waiver of any party's right to take action to enforce against any

non-compliance. Nothing in this Environmental Covenant shall restrict the Director of Ohio EPA from exercising any authority under applicable law.

8. Rights of Access. Owner hereby grants to Ohio EPA's authorized representatives and to the Holder(s) the right of access to the Property for implementation or enforcement of this Environmental Covenant and shall require such access as a condition of any transfer of the Property or any portion thereof.

9. Compliance Reporting. Owner or Transferee shall annually submit to Ohio EPA and to any Holders, before June 1<sup>st</sup> of each year, written documentation that complies with the requirements of Ohio Administrative Code rule 3745-50-42(B)-(D), verifying that the activity and use limitations set forth herein remain in place and are being complied with.

10. Notice upon Conveyance. Each instrument hereafter conveying any interest in the Property or any portion thereof (including leasehold interests) shall contain a notice of the activity and use limitations set forth in this Environmental Covenant and provide the recorded location of this Environmental Covenant. The notice shall be substantially in the following form:

**THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL COVENANT, RECORDED IN THE DEED OR OFFICIAL RECORDS OF LORAIN COUNTY RECORDER'S OFFICE ON \_\_\_\_\_, 201\_\_, IN [DOCUMENT \_\_\_\_, or BOOK \_\_\_\_, PAGE \_\_\_\_]. THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS:**

- A. Commercial or Industrial Land Use Only.** The Property is restricted to commercial or industrial land use only. Residential land use of the Property is prohibited.
- B. Prohibition against Groundwater Extraction.** Groundwater located at or underlying the Property shall not be extracted or used for any purpose, potable or otherwise, except for investigation, monitoring, or remediation of the groundwater (including by monitoring well) or in conjunction with construction or excavation activities or maintenance of subsurface utilities.
- C. Prohibition against Potable Water Well Construction.** Construction of potable water wells is prohibited.

- D. Limitation on Building Occupancy. Remedy or Demonstration Obligations -**  
**- the Property must comply with applicable standards for the vapor intrusion to indoor air exposure pathway.**
- E. Limitation on Excavation Activities. For any and all excavation activities occurring at any depth below the surface within the areas identified in Exhibit 2, notice must be provided to the Owner and Ohio EPA.**
- F. Limitation on Transfer of Materials. No subsurface soils shall be transferred from the property without notice to the Owner and Ohio EPA.**
- G. Interference with the Landfill Unit. No activity on the Property that may impact or interfere with the landfill unit, identified in Exhibit 3, and any operation, maintenance, inspection, or monitoring of the landfill unit shall occur without prior written approval from the Ohio EPA.**

Owner or Transferee, if applicable, shall notify Ohio EPA and Holder(s) within ten (10) days after each conveyance of an interest in the Property or any portion thereof. The notice shall include the name, address, and telephone number of the Transferee, a copy of the deed or other documentation evidencing the conveyance, and a survey map that shows the boundaries of the real property being transferred.

11. Representations and Warranties. Owner hereby represents and warrants to the other signatories hereto that:

- a. it is the sole owner of the Property;
- b. it holds fee simple title to the Property and that the Owner conducted a current title search that shows that the Property is not subject to any interests or encumbrances that conflict with the activity and use limitations set forth in this Environmental Covenant;
- c. it has the power and authority to enter into this Environmental Covenant, to grant the rights and interests herein provided, and to carry out all obligations hereunder;
- d. this Environmental Covenant will not materially violate or contravene or constitute a material default under any other agreement, document, or

instrument to which Owner is a party or by which Owner may be bound or affected;

- e. it has identified all other persons that own an interest in or hold an encumbrance on the Property, and, if applicable, notified such persons of the Owner's intention to enter into this Environmental Covenant.

12. Amendment or Termination. This Environmental Covenant may be amended or terminated by consent of all of the following: the Owner, or a Transferee, if applicable; Holders other than Owner, if any; and the Director of the Ohio EPA, pursuant to ORC §§ 5301.82 and 5301.90 and other applicable law. The term "Amendment" as used in this Environmental Covenant shall mean any changes to the Environmental Covenant, including the activity and use limitations set forth herein or the elimination of one or more activity and use limitations so long as there is at least one limitation remaining. The term "Termination" as used in this Environmental Covenant shall mean the elimination of all activity and use limitations set forth herein and all other obligations under this Environmental Covenant.

This Environmental Covenant may be amended or terminated only by a written instrument duly executed by the Director of Ohio EPA and by the Owner or Transferee, if applicable, of the Property or any portion thereof, *and* Holders or their assignees, if any. Within thirty (30) days of signature by all requisite parties on any amendment or termination of this Environmental Covenant, the Owner or Transferee, if applicable, shall file such instrument for recording with the Lorain County Recorder's Office, and shall provide a file- and date-stamped copy of the recorded instrument to Ohio EPA and Holders or their assignees, if any.

13. Severability. If any provision of this Environmental Covenant is found to be unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

14. Governing Law. This Environmental Covenant shall be governed by and interpreted in accordance with the laws of the State of Ohio.

15. Recordation. Within thirty (30) days after the date of the final required signature, Owner shall file this Environmental Covenant for recording, in the same manner as a deed to the Property, with the Lorain County Recorder's Office.

16. Effective Date. The effective date of this Environmental Covenant shall be the date upon which the fully executed Environmental Covenant has been recorded as a deed record for the Property with the Lorain County Recorder's Office.

17. Distribution of Environmental Covenant. Pursuant to ORC § 5301.83, Owner shall distribute a file- and date-stamped copy of the recorded Environmental Covenant to: Ohio EPA; City of Elyria, Ohio; and County of Lorain, Ohio.

18. Notice. Unless otherwise notified in writing by any party hereto or Ohio EPA, any document or communication required by this Environmental Covenant shall be submitted to:

As to Ohio EPA:

Ohio EPA – Central Office  
Division of Environmental Response and Revitalization  
50 West Town Street  
Columbus, OH 43216  
Attn.: DERR Records Management Officer

Or, send electronically to: [records@epa.ohio.gov](mailto:records@epa.ohio.gov)

And

Ohio EPA Northeast District Office  
2110 East Aurora Road  
Twinsburg, Ohio 44087  
Attn: DERR Site Coordinator for RACER Trust

As to Owner:

Pam Barnett  
Cleanup Manager  
RACER Properties LLC  
P.O. Box 43859  
Detroit, MI 48243

As to Holder(s):



Pam Barnett  
Cleanup Manager  
RACER Trust  
P.O. Box 43859  
Detroit, MI 48243

*[Remainder of page left intentionally blank]*

The undersigned represent and certify that they are authorized to execute this Environmental Covenant.

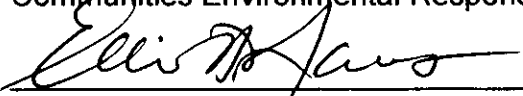
IT IS SO AGREED:

Prepared by Haley & Aldrich

**RACER PROPERTIES LLC**

By: Revitalizing Auto Communities Environmental  
Response Trust, Sole Member of RACER  
Properties LLC

By: EPLET, LLC, acting solely in its capacity as  
Administrative Trustee of Revitalizing Auto  
Communities Environmental Response Trust

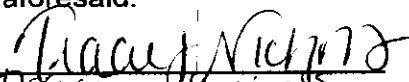
By:   
ELLIOTT P. LAWS, not individually, but acting  
solely in his capacity as Managing Member

STATE OF Michigan }  
COUNTY OF Wayne } SS:

On the 8 day of April, 2020, before me a Notary Public for the State and County aforesaid, personally appeared ELLIOTT P. LAWS, who acknowledged himself to be the Managing Member of EPLET, LLC, the Administrative Trustee of the REVITALIZING AUTO COMMUNITIES ENVIRONMENTAL RESPONSE TRUST (the "Trust"), Sole Member of RACER PROPERTIES LLC, a Delaware limited liability company, and that he, being authorized to do so, executed the foregoing Environmental Covenant, on behalf of RACER PROPERTIES LLC, not individually, but solely in his capacity as Managing Member of EPLET, LLC, Administrative Trustee of the Trust, its Sole Member, for the purposes therein contained by signing his name.


WITNESS my hand and seal the day and year aforesaid.

TRACIE L. NICHOLS  
Notary Public, State of Michigan  
County of Wayne  
My Commission Expires 03-19-2023  
Acting in the County of Wayne

Notary's Signature:   
Notary's Name: Tracie L. Nichols  
Notary Public, State of Michigan  
County of Wayne  
My Commission Expires: 3/19/23  
Acting in the County of: Wayne

**HOLDER NAME: REVITALIZING AUTO COMMUNITIES ENVIRONMENTAL  
RESPONSE TRUST**

By: EPLET, LLC, acting solely in its capacity as  
Administrative Trustee of Revitalizing Auto  
Communities Environmental Response Trust

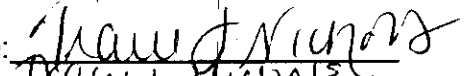
By:   
ELLIOTT P. LAWS, not individually, but acting  
solely in his capacity as Managing Member

STATE OF Michigan }  
COUNTY OF Wayne } SS:

On the 8th day of April, 2020, before me a Notary Public for  
the State and County aforesaid, personally appeared ELLIOTT P. LAWS, who  
acknowledged himself to be the Managing Member of EPLET, LLC, the Administrative  
Trustee of the REVITALIZING AUTO COMMUNITIES ENVIRONMENTAL RESPONSE  
TRUST (the "Trust"), and that he, being authorized to do so, executed the foregoing  
Environmental Covenant, on behalf of the Trust, not individually, but solely in his capacity  
as Managing Member of EPLET, LLC, for the purposes therein contained by signing his  
name.

WITNESS my hand and seal the day and year aforesaid.

TRACIE L. NICHOLS  
Notary Public, State of Michigan  
County of Wayne  
My Commission Expires 03-19-2023  
Acting in the County of Wayne

Notary's Signature:   
Notary's Name: Tracie L. Nichols  
Notary Public, State of Michigan  
County of Wayne  
My Commission Expires: 3/19/23  
Acting in the County of: Wayne

**OHIO ENVIRONMENTAL PROTECTION AGENCY**

Laurie A. Stevenson 5/7/20  
Laurie A. Stevenson, Director

State of Ohio                     )  
  )  
County of Franklin            )       ss:

Before me, a notary public, in and for Franklin County, Ohio, personally appeared Laurie A. Stevenson, the Director of Ohio EPA, who acknowledged to me that he did execute the foregoing instrument on behalf of Ohio EPA.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this 7 day of May, 2020.

  
\_\_\_\_\_  
Notary Public

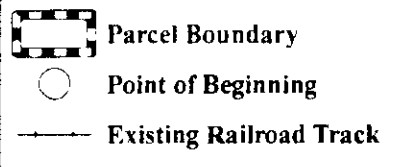
This instrument was prepared by:

Carl P. Garvey, General Counsel  
RACER Properties LLC  
P.O. Box 43859  
Detroit, MI 48243

Sarah M. Miles, Staff Attorney  
Ohio EPA-Legal Office  
50 West Town Street  
Columbus, OH 43215

**MARCUS J. GLASGOW**  
NOTARY PUBLIC, STATE OF OHIO  
LIFETIME COMMISSION

**EXHIBIT 1**



**Tax Parcel ID**  
**06-24-012-102-004**

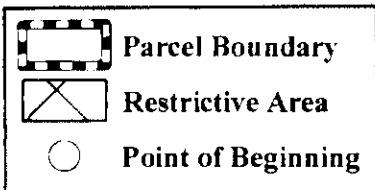
**95.225+/- Acres**

**Leo Bullocks Pkwy**

0 250 500 Feet

Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS,  
USDA, USGS, AeroGRID, IGN, and the GIS User Community

**EXHIBIT 2**



**Area Subject to Limitations  
on Excavation Activities**

**37.159+/- Acres**




0 250 500 Feet

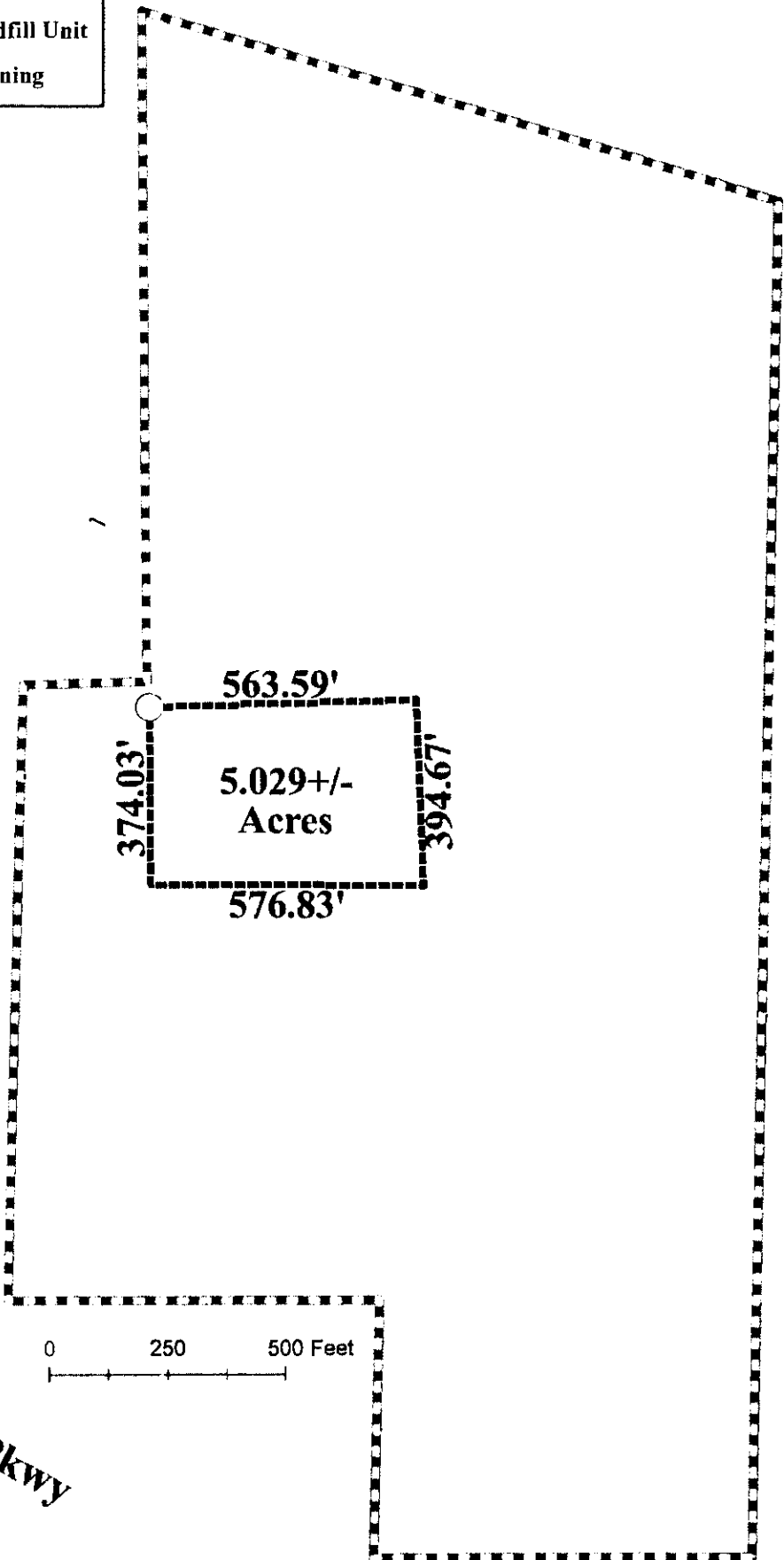
**Leo Bullocks Pkwy**

Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNR/Airbus DS,  
USDA, USGS, AeroGRID, IGN, and the GIS User Community



**EXHIBIT 3**

-  Parcel Boundary
-  Extent of Landfill Unit
-  Point of Beginning



**Leo Bullocks Pkwy**

0 250 500 Feet

**HALEY AND ALDRICH INC**  
 6500 ROCKSIDE RD  
 SUITE 200  
 CLEVELAND, OH 44131

Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community